



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**PLANNING BOARD
MINUTES
OCTOBER 22, 2009
(Approved as amended 12/17/09)**

PRESENT: Chairman Craig Francisco; Frank Bolton, Vice Chairman; Tom Clow, Exofficio; George Malette, Secretary; Neal Kurk; Naomi Bolton, Land Use Coordinator

GUESTS: Kris Perrault; Earl Sandford; Richard Perrault; Dan Scanlon; Linda Chatfield; Joan Hatch; Douglas Hatch; Genevieve Lofaro; Darrin Lofaro; Mark Lanier; Scott Lanier; John Miles; Bruce Fillmore; Nancy Fillmore.

I. CALL TO ORDER:

Chairman Craig Francisco called the meeting to order at 7:00 PM at the Weare Town Office Building.

II. PUBLIC HEARING:

MARK & JOYCE LANIER – SUBDIVISION (CONTINUED HEARING), CONCORD STAGE ROAD (ROUTE 77), TAX MAP 403-159: Chairman Francisco opened this hearing at 7:01 PM. Art Siciliano was present. Mr. Siciliano stated that the wetlands stamp has been added to the plans. He added note 4 that describes the driveway easement for each lot. The Zoning Board granted the variance for the wetlands buffer crossing on October 6th without conditions. The following items are outstanding:

- A note to be added to the plan that no further subdivision will be allowed
- A note to be added to the plan that only single family homes are allowed on each lot
- State of NH Driveway permit
- State of NH Wetlands permits

Chairman Francisco asked if there was any public that would like to speak. Doug Hatch stated that they have made their concerns very well known on all the hearings.

Tom Clow stated that when we were on the site walk there were two areas for the crossing. The first was larger. It was suggested on the site walk that possibly a double culvert would be better than one. Mr. Siciliano responded that his engineer designed it with one culvert. Chairman Francisco indicated that DES frowns on a double culvert. Mr. Clow stated it was just a comment that was made

on the single versus double culvert and it sounded reasonable because of the possible surge of water.

Chairman Francisco stated that according to the engineer's drainage report, it states that a 2 year storm event, both pre and post storm, both crossings are the same. At the 10 year storm event, wetland "B" remains the same and wetland "A" actually is more at the pre than post. At the 25 year event, wetland "A" actually is more at the pre than post. At the 25 year event, wetland "A" is a lot less post versus pre and wetland "B" is a little less post versus pre. The subdivision regulations state a 25 year minimum.

Neal Kurk stated that he can't support the application. Based on the site walk this is one of the least desirable properties that shouldn't be subdivided. This is a very large low wet area and doesn't feel it is suitable for development. Based on the testimony from abutters it will have a significant amount of damage to surrounding areas. The potential for increase flooding in the surrounding areas is a reason that this should not be approved. He feels that it is inconsistent with the spirit and intent of the zoning ordinance.

Frank Bolton stated that Mr. Kurk brings up an interesting point but we don't have a rebuttal other than testimony from the applicant. It is expensive to get a professional opinion but on the other hand we don't have that information and he feels it is a catch 22 and to weigh what would have been is hard.

Mr. Kurk stated that we are not obligated to base it on testimony and it is up to the applicant for the burden of proof and what has been submitted to him does not show the burden of proof in his opinion.

Mr. Bolton stated that the other things that occurred to him is that the abutting properties were inappropriately developed and now we are kind of penalizing this landowners wishes because it could impact a development that was done several years ago. As you walk it you can see there are issues there. He is on the fence regarding this decision.

Chairman Francisco stated that he didn't think the runoff is going to be increased. It is minimal development in a large piece of land and we have a signed engineer report that states there will be a minimal increase.

Tom Clow stated in a 100 year flood the same amount of water is going to flow but it isn't going to change the amount of water one way or the other. We do have to look at the rights of land owners including the potential home owner. We talked about whether the house sites are appropriate. He feels that the State would look at that as well, so it comes back to the wetlands crossings which require DES approval. The Zoning Board gave their approval for the buffer. He doesn't feel that we should stand in the way because there are other things that are in the way before it comes into reality.

Chairman Francisco stated that our zoning ordinance is more stringent than the State regulations. All the uplands are almost ½ acre larger than the minimum.

Chairman Francisco made a motion to approve the plan subject to the following conditions:

- A note to be added to the plan that no further subdivision will be allowed
- A note to be added to the plan that only single family homes are allowed on each lot
- State of NH Driveway permit
- State of NH Wetlands permits

Frank Bolton seconded the motion. Vote: 3 in favor (Clow, Malette and Bolton) and 1 opposed (Kurk). Mr. Kurk asked why Chairman Francisco didn't vote after making the motion. Chairman Francisco stated that the chairman only votes if it is a tie.

Chairman Francisco closed this hearing at 7:45 PM.

RKG CARRIAGE HOUSE, LLC – EXPEDITED SITE PLAN REVIEW, 50 B & B LANE, TAX MAP #411-200: Chairman Francisco opened this hearing at 7:46 PM. Earl Sandford was present. Mr. Sandford explained they were here on September 24th with a conceptual for this property. This is the existing B.E. Pepin Poultry Business on 50 B & B Lane. Mr. Perrault purchased the property. They are allowing Pepin Poultry to stay on the site for four years. They are here to discuss an expedited site plan to include their business. Since the conceptual hearing they went to the Conservation Commission on October 14th and have made a few changes to the plan to address their concerns. Mr. Sandford went through the changes.

Tom Clow asked about an alarm system in the doubled walled tanks. Mr. Sandford stated that there is a fill alarm. The alarm goes off when there is a sensing something is collecting in the void space.

Neal Kurk asked if the containment area capable of holding all 8 tanks. Mr. Sandford stated that the regulations state that you need to be able to hold 110% of the largest tank. They are covered at 7/10^{ths} of a foot but they are making the wall 24". Mr. Kurk asked if the tanks are on legs or on the ground. He is looking at a domino effect. Mr. Sandford stated that they are on a reinforced concrete pad and there is a concrete cradle for each tank. Mr. Kurk stated that note #7 indicates that there is a statement about "any lot", that didn't make sense. Mr. Kurk asked Chairman Francisco, sometimes we deal with hours of operation and this is an industrial zone and maybe it is not necessary. He didn't see any reason for it in the industrial park.

Frank Bolton stated that there are many of the other industries in the park that leave and come at various hours. Mr. Kurk asked about signage. Mr. Sandford

stated that there is none being proposed but understands that if they want to add a sign they would need to come back.

George Malette asked about a wetland stamp. Mr. Sandford stated that he could stamp it. The original ones that he turned in have the stamp; the stamp was omitted by error.

Neal Kurk moved to accept the application as complete; George Malette seconded the motion, all in favor.

Nancy Fillmore, 181 Gould Road, stated that she felt that the hours of operation are important to the residents. She asked where the alarms goes off if there is one. She sometimes is the one that calls the fire department when other alarms are going off, especially on the weekend. She is concerned because in the past the previous owner allowed fireworks to be set off on the property and now with fuel being stored there it is not a good situation. She is also hoping that at 3 AM there is not a train whistle going off.

Mr. Perrault stated that the alarm is a color (red or green) and not audible. The alarm is really more of a time issue and not like a break in. Mr. Clow stated that the deliveries will be mostly during the day.

Chairman Francisco stated that he has the conservation comments. He went over the comments and Mr. Sandford pointed out how they addressed the comments. The one comment that Mr. Sandford had forgotten to include was the 50 foot building setback.

Mr. Kurk asked if all the gray area on the plan will be paved. Mr. Perrault stated that is their intention but if it can't be done this fall it would be done in the spring. It is being paved so that it can carry the weight of a truck.

Mr. Kurk feels we should address the hours of operation one way or another, either limit the hours or not. He felt that in an industrial zone we shouldn't limit the hours of operation. He would suggest that Mrs. Fillmore has made her issues noted. The applicant is very reasonable and he would like to see them talk. Mrs. Fillmore stated that she was just concerned that they would be making very sure there won't be any loud horns, noises, etc. if that is right the police could possibly be taking action. He thinks the board does not need to have any hours of operation limit.

George Malette asked about the impervious surface is addressed under Article 29.7.2. He is also looking at Article 25.7 which is the 100' buffer which appears to be good. Frank Bolton stated that he recalled at the last meeting that the current gravel and the pavement according to DES there is no difference. Mr. Kurk asked if the water will be dealt with on the property and not shed to the others. Mr. Sandford stated that he did not do a granular survey but he will admit

where the current trucks have run the water puddles now. Mr. Kurk stated that in an aquifer the surface water needs to be shed back into the aquifer and the new use being requested is not supposed to be shed somewhere else. Chairman Francisco felt that by loaming and seeding some of the areas is that it will be an improvement. He felt that this will make it better. Mr. Malette stated that this is pre-existing non-conforming use and this will not be making it any more non-conforming. If this was a totally new application the 10% would be enforced but this has been there prior to the adoption of this. Chairman Francisco still feels the water will still infiltrate into the aquifer, whether it is compacted gravel or paved.

John Myles, Putnam Fuel Company was present and stated that he has no problem with this application but when they put in their facility in 1989 they were held to the 10% and if this is ok he will be in next because he would like to pave his lot.

Frank Bolton stated that he thinks it is unfortunate they are going to pave this because it is over an aquifer. Mr. Sandford stated that he would lean towards paving and that is why they were going to have the balance of loaming and seeding the front, which is now just gravel. The following items are outstanding:

- show wetland buffer
- 100' setback line to be shown from back property line
- remove word "grassed" from employee parking area
- drainage calculation letter showing post infiltration rated is higher or equal to pre infiltration rate

George Malette moved to continue this hearing to November; Frank Bolton seconded the motion. Discussion: Mr. Perrault stated that continuing this will be shutting down the project. Mr. Sandford explained that without an approval by this board they can't apply to the State for any permitting which is a very expensive and long process. Also the plan was to pour the concrete pads and pave at the same time and if it gets continued to November then they can't do that either. Mr. Bolton stated that he is concerned with that comment. Tom Clow asked if the board would like to handle it in two phases as to not hold up the applicant. George Malette agreed to withdraw the motion and Frank Bolton withdrew the second. Mr. Kurk stated that he is concerned with the Chairman of the Board having to make the determination of the drainage calculation letter. Mr. Kurk wondered if the board could hold a special meeting in a few days so that it wouldn't be left up to the Chairman's discretion. Mr. Sandford stated that he felt the drainage calculation wouldn't be that close and if for some reason it was, the Chairman could make that determination.

Frank Bolton moved for conditional approval subject to the following:

- show wetland buffer
- 100' setback line to be shown from back property line
- remove word "grassed" from employee parking area
- drainage calculation letter showing post infiltration rate is higher or equal to pre infiltration rate

Tom Clow seconded the motion. Vote: 3 in favor (Clow, Malette and Bolton) and 1 opposed (Kurk). Chairman Francisco closed this hearing at 9:50 PM.

III. OTHER BUSINESS:

SEPTEMBER 24, 2009 MINUTES: Frank Bolton moved to approve the September 24, 2009 minutes as written; Tom Clow seconded the motion, all in favor except for George Malette who abstains.

SEPTEMBER 30, 2009 MINUTES: These minutes will be taken up at the November 12th work session meeting.

OCTOBER 8, 2009 MINUTES: These minutes will also be taken up at the November 12th work session meeting.

Chairman Francisco stated that he would like to go into non-public session to discuss the letter received from Town Counsel. After the non-public session the board will be adjourning.

NON-PUBLIC SESSION: Chairman Francisco moved to ender the non-public session at 10:10 PM pursuant to RSA 91-A:3 II (e); Neal Kurk seconded the motion. A roll call vote was taken: Kurk – yes; Clow – yes; Malette – yes; Bolton – yes; Francisco – yes.

Planning Board member Frank Bolton was present in the non-public session but recused himself from the board discussion on the issue. The board discussed the legal opinion received from Town Counsel.

George Malette moved to exit the non-public session at 10:50 PM; Neal Kurk seconded the motion. A roll call vote was taken: Kurk – yes; Clow – yes; Malette – yes; Bolton – yes; Francisco – yes.

George Malette moved to seal and restrict the non-public minutes; Neal Kurk seconded the motion, all in favor.

Chairman Francisco stated that now that we have received the opinion the next hearing can be scheduled. The next hearing for the site plan review for the proposed asphalt hearing will be on Wednesday, November 18th at 7 PM at the Weare Middle School Cafetorium. The immediate abutters will be renotified at the applicant's expense per State statute.

IV. ADJOURNMENT:

As there was no further business to come before the board, Tom Clow moved to adjourn at 10:55 PM; Neal Kurk seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator